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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/167697

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 03, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 25, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's daughter was correctly removed from his FoodShare case and placed on the FoodShare of the child's mother.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Simone Johnson  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest a decision by the agency to remove Petitioner's daughter from his FoodShare household and to place her in the FoodShare household of the child's mother as of September 1, 2015.

3. Petitioner's daughter was on the FoodShare case of her mother until March 2015 when the agency received a letter ostensibly signed by both Petitioner and the mother indicating that the daughter should be on Petitioner's case.
4. According to the agency summary of action prepared for this case the mother appeared at the agency on or about June 4, 2015 and said the daughter lives with her. The agency asked for verification of the living arrangements from both parties. Again a letter was submitted, ostensibly signed by both parents, stating the daughter lives with the father. The mother then appeared at the agency and told agency personnel that she had not signed the letters indicating that the daughter lived with the father (i.e., Petitioner).
5. A 2001 Milwaukee County Circuit Court Judgement of Paternity states that the mother has primary placement and that the father has visitation.
6. School records show that Petitioner is involved with his daughter's schooling. April and November 2014 school letters indicate that Petitioner's daughter lives with him.
7. Based on the statements of the mother and the only available court record, the agency determined that the daughter lives with the mother and removed her from Petitioner's FoodShare case as of September 1, 2015.

### **DISCUSSION**

The determination of which FoodShare household a child is to be determined based on the following:

#### 3.2.1.1 Joint or Shared Physical Custody of Children

Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. There may be situations when the residence of a child is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

If the parents cannot or will not decide, compare the parents' activities and responsibilities against the following list and determine which one is exercising more control than the other:

1. If the parents reside in different school districts, where does the child attend school? Who selected the school?
2. Who assists the child with homework or school-related tasks?
3. Are there tuition costs for the child's education? If so, who pays those costs?
4. If the child is enrolled in day care, who arranges for and pays these costs?
5. Who is responsible for taking the child to and from school and/or day care?
6. Which parent is listed as the contact for emergencies at the child's school or day care provider?
7. Who arranges medical and dental care for the child? Who selects the physician and dentist?
8. Who maintains the child's medical records?

9. Who initiates decisions regarding the child's future?
10. Who responds to medical or law enforcement emergencies involving the child?
11. Who spends money on food or clothing for the child when the child visits the absent parent?
12. Who disciplines the child?
13. Who plays with the child and arranges for entertainment?
14. Are more of the child's toys, clothing, etc. kept at one parent's home than the other's?

Only one parent can receive FS for a child. If you still cannot determine which food unit the child should be in, the caretaker that first applies would be eligible. Use the best information available to make your decision, and document in case comments the basis of your determination. If you still cannot determine which food unit the child should be in, call the CARES call center.

*FoodShare Wisconsin Handbook (FSH), §3.2.1.1. Examples omitted.*

Petitioner testified that his daughter has lived with him since age 9 months and has to live with him due to behavioral problems.

Where there is a situation such as this one it is difficult to know with certainty where a child resides. Clearly the letters, allegedly signed by both parents, cannot be relied upon. School letters from 2014 don't indicate how the school personnel know where the child resides. They are hearsay uncorroborated by other reliable evidence. If Petitioner's daughter has lived with him for so long it is not clear to me how the mother had an open FoodShare case including the daughter. In the end, even though it is old, the Court order is the only reliable evidence here and it states that the mother has primary physical custody. Based on that, I reach the same conclusion as the agency; the daughter belongs on the mother's FoodShare case.

### **CONCLUSIONS OF LAW**

That based on available evidence, the agency correctly removed Petitioner's daughter from Petitioner's FoodShare case.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 29th day of September, 2015

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 29, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability